

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT ALAN CARMITCHEL,

Defendant.

Case No. 2:14-cr-00261-RFB-GWF

ORDER

Defendant Scott Alan Carmitchel is currently in the custody of the Bureau of Prisons at the Federal Medical Center in Butner, North Carolina (“FMC Butner”), pursuant to 18 U.S.C. § 4241(d). ECF No. 49, 58. On September 8, 2015, the Court held a hearing in this case at which counsel for the Government as well as Bryon Herbel, M.D., a staff psychiatrist at FMC Butner, indicated their position that the Government would not be able to establish a substantial probability that Mr. Carmitchel would become competent to stand trial within a reasonable period of time, as required by 18 U.S.C. § 4241(d)(2). Dr. Herbel also stated his opinion that Mr. Carmitchel should be evaluated under 18 U.S.C. § 4246 given Mr. Carmitchel’s medical history and the likelihood that he may pose a danger to others if released.

Based upon this information, the Court finds that a reasonable basis exists to temporarily extend Mr. Carmitchel’s commitment in FMC Butner under 18 U.S.C. § 4246(a), for a period not to exceed 45 days, for the Director of that facility to evaluate whether Mr. Carmitchel is suffering from a mental disease or defect such that his release would create a substantial risk of bodily injury to another person or serious damage to property of another. See United States v. Godinez-Ortiz, 563 F.3d 1022, 1032 (9th Cir. 2009) (holding that Section 4246 permits district courts to temporarily commit a person “so that the director can conduct the evaluation necessary to make

1 the certification decision.”). This evaluation shall be conducted in accordance with 18 U.S.C. §
2 4247(b).

3 Therefore,

4 **IT IS ORDERED** that Defendant Scott Alan Carmitchel shall continue to be committed
5 to the custody of the Bureau of Prisons at FMC Butner for a period no longer than 45 days for the
6 purpose of an evaluation under 18 U.S.C. § 4246(a) and 4247(b).

7 **IT IS FURTHER ORDERED** that if the Director of FMC Butner makes a certification
8 of dangerousness in accordance with 18 U.S.C. § 4246(a), the Director shall transmit such
9 certificate to the clerk of court for the District in which Mr. Carmitchel is confined within 45 days
10 of the date of entry of this Order.

11 DATED: September 8, 2015.



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14 **RICHARD F. BOULWARE, II**
15 **United States District Judge**
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